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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,938	12/11/2000	Gerald Kraeutler	P00,1892	3439

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Schiff Hardin & Waite  
Patent Department  
6600 Floor Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606

EXAMINER

DUONG, THOMAS

ART UNIT PAPER NUMBER

2143

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/734,938

Applicant(s)

KRAEUTLER ET AL.

Examiner

Thomas Duong

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5 (4/11/02).
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed March 28, 2001 (Paper No. 4) fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Please resubmit the information disclosure statement and the pertinent references associated with it. The information referred to therein has not been considered.

### *Priority*

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany (DE) on December 9, 1999. It is noted, however, that applicant has not filed a certified copy of the 19959434.1 application as required by 35 U.S.C. 119(b). Please submit a certified copy of the 19959434.1 application as required by 35 U.S.C. 119(b).

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of *claim 1* must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. Please provide drawings (such as state diagrams) showing the steps described in the specification. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The disclosure is objected to because of the following informalities:

- Please correct, "sixth memory block B6" (ln.4, para.3, pg.4)
- Please clarify, "To begin" (what particular function or action) (ln.1, para.4, pg.4)
- Please clarify, "determined by the formation and comparison of a checksum" (is the checksum formed on each loaded program parts separately or together; comparing the checksum to what value) (ln.2, para.1, pg.5)
- Please clarify, "determined by the forming and comparing a checksum" (comparing the checksum to what value) (ln.4, para.2, pg.5)
- Please clarify, "reveals no error" (what happens in case of an error) (ln.1, para.3, pg.5)
- Please add, "VP" after program for clarification (ln.2, para.3, pg.5)
- Please clarify, "After which, a branch is made ... another data transmission" (the language is unclear) (ln.4, para.3, pg.5)
- Please clarify, "Basic elements" (what are the basic elements) (ln.1, para.4, pg.5)
- Please clarify, "the entire memory area containing the operating system is not overwritten..." (how can the old OS not be overwritten according to steps Z1-Z4) (ln.4, para.3, pg.5)

- Please clarify all states and steps of the claimed invention. Also, please clearly describe the new accompanying drawings requested above (para.5, pg.5 through para.1, pg.8).

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 2, the phrase "requesting the assistance" renders the claim indefinite because it is unclear what service and/or step is carried out by the operating system of the telecommunication terminal device. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerche (US006457175B1) and in view of Sun et al. (US005901330A).
9. With regard to claims 1-5 and 11-12, Lerche reference discloses,

- *administering operating system data (software upgrade) for an operating system running in the telecommunication terminal device (machine, modem 16), in a data management system (ISP 26, software supplier 36) remote from said telecommunication terminal device; (Lerche, col.1, lines 41-51; col.2, lines 18-25; fig.1)*
- *establishing a connection for transmitting data, including said operating system data, between the telecommunication terminal device and the data management system; (Lerche, col.1, lines 41-51; col.7, lines 30-41; fig.1; module 106 on fig.6A)*
- *transmitting the operating system data from said data management system to a memory area of the operating system running in said telecommunication terminal device; (Lerche, col.1, lines 41-51; col.7, lines 46-53; fig.1; module 108 on fig.6A)*
- *aborting the connection in case of error; (Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; module 116 on fig.6A)*
- *establishing another connection between the telecommunication terminal device and the data management system; and repeating transmission of said operating system data from said data management system to said terminal device.*  
(Lerche, col.1, lines 41-51; col.8, lines 3-14; fig.1; modules 106-108 and 116-118 on fig.6A)

However, Lerche reference does not explicitly disclose,

- *checking the correctness of the data transmitted in the telecommunication terminal device;*

Sun teaches,

- *checking the correctness of the data transmitted in the telecommunication terminal device; (Sun, col.13, line 59 - col.14, line12)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Sun reference with Lerche reference to enhance the network by preventing a failure in remotely upgrading software in a network device. The remote upgrading of software stored within a memory associated with the networked device may be problematic in that, should the upgrade installation fail for some reason, the networked device may be rendered totally inoperative. The restoration of functionality to the network device may, in such cases, be expensive and inconvenient especially if service personnel are required to dispatch to the site of the networked device to address and correct the failed software upgrade operation.

10. With regard to claims 6 and 13-14, Lerche and Sun references disclose the invention substantially as claimed,

See *claim 1* rejection as detailed above.

Furthermore, Lerche reference discloses,

- *further comprising the step of modifying the operating system running in the telecommunication terminal device. (Lerche, col.1, lines 41-51; col.3, lines 3-14; fig.1; fig.6A)*
- *wherein the step of modifying further comprises activating the modified operating system given the correctness of the data transmission (Lerche, col.1, lines 41-51; col.3, lines 36-54; fig.1; fig.6B)*

11. With regard to claims 7-8, Lerche and Sun references disclose the invention substantially as claimed,

See *claim 1* rejection as detailed above.

Furthermore, Lerche reference discloses,

- *further comprising the step of storing at least a part of the operating system data in the memory area of the operating system. (Lerche, col.1, lines 41-51; col.7, lines 46-53; fig.1; module 108 on fig.6A)*
- *wherein the step of storing comprises ensuring that the operating system is not overwritten by the transmitted operating system data. (Lerche, col.1, lines 41-51; col.7, lines 46-53; fig.1; module 108 on fig.6A)*

12. With regard to claims 9-10, Lerche and Sun references disclose the invention substantially as claimed,

See *claim 1* rejection as detailed above.

Furthermore, Sun reference discloses,

- *further comprising the step of accepting in the data management system an answerback from the telecommunication terminal device regarding the correctness of the data transmission. (Sun, col.13, line 59 - col.14, line12)*
- *wherein the step of checking further comprises accepting in the data management center an answerback from the telecommunication terminal device regarding the correctness of the data transmission and repeating the data transmission after a predetermined time upon the occurrence of an error in the data transmission. (Sun, col.13, line 59 - col.14, line12)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Sun reference with Lerche reference to enhance the network by preventing a failure in remotely upgrading software in a network device. The remote upgrading of software stored within a memory associated with the networked device may be problematic in that, should the upgrade installation fail



for some reason, the networked device may be rendered totally inoperative. The restoration of functionality to the network device may, in such cases, be expensive and inconvenient especially if service personnel are required to dispatch to the site of the networked device to address and correct the failed software upgrade operation.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Sun et al. (US006282675B1)
- Suzuki (US006301345B1)
- May et al. (US005809251A)
- Beasley et al. (US005699275)
- Siu et al. (US005452339A)
- Wadsworth et al. (US005701492)

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 703/305-1886. The examiner can normally be reached on M-F 7:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703/308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9306 for regular communications and 703/872-9306 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-3900.

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*Thomas Duong (AU2143)*

*April 5, 2004*



**DAVID WILEY**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100